United States District Court Southern District of Texas

ENTERED

December 05, 2023 Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS VICTORIA DIVISION

MARK CLIFF SCHWARZER,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Civil Case No. 6:18-CV-00034
	§	
DALE WAINWRIGHT, BRYAN	§	
COLLIER, JENNIFER SMITH, LARRY	§	
MILES, E. F. DEAYALA, MOLLY	§	
FRANCIS, FAITH JOHNSON, SICHAN	§	
SIV, ERIC NICHOLS, RODNEY	§	
BURROW, BOBBY LUMPKIN,	§	
LEONARD ECHESSA, ARICA D.	§	
FLORES, O'DANIEL PATRICK and	§	
DERRELYNN PERRYMAN,	§	
	§	
Defendants.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the November 7, 2023 Memorandum and Recommendation ("M&R") prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 84). Magistrate Judge Neurock made findings and conclusions and recommended that Defendants O'Daniel, Perryman, Miles, DeAyala, Francis, Johnson, Siv, Nichols, and Burrow's Motion to Dismiss, (Dkt. No. 83 at 6), be granted. (Dkt. No. 84).

"Plaintiff's only remaining claim in this action is his First Amendment claim against Defendants in their official capacities for declaratory and injunctive relief based on the provisions of TDCJ's correspondence policy set forth in BP-03.91." (Dkt. No. 84 at 4). Judge Neurock recommends that Defendants' motion to dismiss under Rule 12(h)(3) be granted, and that Plaintiff's remaining claim for declaratory and injunctive relief based

on the provisions of BP-03.91, against these Defendants in their official capacities, be dismissed without prejudice for lack of subject matter jurisdiction under the mootness doctrine. (*Id.* at 6).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). No party filed an objection. As a result, review is straightforward: plain error. *Guillory v. PPG Indus., Inc.,* 434 F.3d 303, 308 (5th Cir. 2005). No plain error appears.

Accordingly, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Neurock's M&R (Dkt. No. 84) is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Defendants O'Daniel, Perryman, Miles, DeAyala, Francis, Johnson, Siv, Nichols, and Burrow's Motion to Dismiss, (Dkt. No. 83), is **GRANTED**.

It is SO ORDERED.

Signed on December 4, 2023.

DREW B. TIPTON
UNITED STATES DISTRICT JUDGE